

REMARKS/ARGUMENTS

In response to the *Final* Office Action dated June 25, 2009, Applicants respectfully request reconsideration. Claim 1 has been amended. The amendments to claim 1 do not necessitate a new search since they do not materially change the limitations of the claim. Therefore, if new references are cited in rejection of the claims, the resulting Office Action should be non-final.

Claim Rejections Under 35 U.S.C. §101

Claims 1, 2, 4-7, 10-14, 16, 31-32, 34-35, and 37-43 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. The Office Action asserts that since the specification describes that modules can be software, then the claim contains no statutory subject matter. Applicants disagree. The software embodiments of modules are tied to a machine because claim 1 recites features that cannot be performed by software alone, but only software executed by a machine (e.g., a processor). For example claim 1 recites "a user interface module responsive to the determination of the worker module," and "the user interface module generates the first user interface portion." However, in order to expedite allowance of the claims, Applicants have amended claim 1 to include a processor. Thus, the claims are tied to a particular machine and are patent eligible.

The Office Action asserts that independent claims 31 and 35 are also non-statutory. The Office Action states, on page 3, that the specification states, at paragraph [0110], that "virtually any aspect of the embodiments of the invention described herein can be implemented using software, hardware or any combination of hardware and software." Just because the invention can be software does not redefine the accepted "means plus function" and "Beauregard" language of claims 31 and 35. Independent claim 31 recites various means for performing functions. By definition, the means are tied to hardware that is described in the specification for performing the various functions. For example, the means can be embodied in the general purpose computer illustrated in Figure 1. The software embodiments are tied to a

machine because claim 31 recites means for doing various functions and software alone cannot do these functions but only software executed by a machine (e.g., a processor). Thus, claim 31 recites, and its dependent claims 32 and 34 recite, patent-eligible subject matter. Independent claim 35 recites a computer program product residing on a computer readable medium comprising computer-readable instructions that will cause a computer to perform the recited functions. Thus, independent claim 35 is also tied to a particular piece of hardware such as, for example, the general purpose computer of Figure 1. Thus, independent claim 35 recites, and its dependent claims 37-38 recite, patent-eligible subject matter.

Claim Rejections Under 35 U.S.C. §103

Claims 1, 2, 4-7, 10-14, 16-29, 31-32, 34-35 and 37-43 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. App. Pub. No. 2003/0033550 (Kuiawa).

Common Ownership of Application and Kuiawa

Applicants respectfully assert that claims 1, 2, 4-7, 10-14, 16 and 39-43 are patentable in view of Kuiawa. Applicants respectfully assert that the use of Kuiawa in an obviousness rejection is excluded by 35 U.S.C. § 103(c)(1). Kuiawa was owned by American Power Conversion Corporation (APC) as of January 9, 2002 (the filing date of the present application) by way of an assignment recorded on August 10, 2001 at reel/frame 012074/0846, and was owned by, or subject to assignment to, APC at the time the claimed invention was made. The claimed invention was subject to assignment to APC when it was made, as confirmed by an assignment to APC, a copy of which is attached hereto as Appendix 1. Kuiawa qualifies as prior art to the present application, if at all, only under 35 U.S.C. § 102(e). Therefore, under 35 U.S.C. § 103(c)(1), Kuiawa cannot preclude patentability of the claimed invention under 35 U.S.C. § 103(a).

Appl. No. 10/042,910
Amdt. dated September 16, 2009
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group 2179

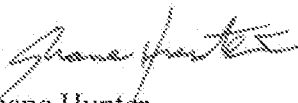
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CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-350-6100.

Respectfully submitted,


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Attachments
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